

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1908.

No. 1856.

No. 3 Special Calendar

April Term 1908

No. 21, SPECIAL CALENDAR

535

JAMES RUDOLPH GARFIELD, SECRETARY OF THE
INTERIOR, APPELLANT,

vs.

THE UNITED STATES OF AMERICA *EX RELATIONE* BEN-
JAMIN F. VAUGHAN, GUARDIAN AND NEXT FRIEND
OF EDWARD A. VAUGHAN, GROVER CLEVELAND
VAUGHAN, AND OSCAR S. VAUGHAN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 24, 1908.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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No. 1856

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INDEX.

	Original.	Print.
Caption	a	1
Petition for mandamus.....	1	1
Rule to show cause.....	16	10
Marshal's return.....	17	11
Answer.....	17	11
Exhibit "A"—Letter from Secretary of Interior to Commission of Five Civilized Tribes.....	26	15
"B"—Chickasaw roll, citizens by blood.....	28	16
"C"—Letter from Assistant Secretary of Interior to Commissioner of Five Civilized Tribes.....	29	17
"D"—Letter from Secretary of Interior to Commis- sioner of Five Civilized Tribes.....	31	17
"E"—Chickasaw roll, citizens by blood.....	34	19
Demurrer.....	35	19
Note	35	19
Order that mandamus issue.....	36	20
Order for entering appeal and issuing citation.....	37	20
Citation.....	38	21
Directions to clerk for preparation of transcript of record.....	39	22
Clerk's certificate.....	40	22

In the Court of Appeals of the District of Columbia.

No. 1856.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Appellant,
vs.
THE UNITED STATES OF AMERICA *ex Relatione* BENJAMIN F.
VAUGHAN, &c.

a Supreme Court of the District of Columbia.

At Law. No. 49698.

THE UNITED STATES OF AMERICA *ex Relatione* BENJAMIN F.
VAUGHAN, Guardian & Next Friend of EDWARD A. VAUGHAN,
GROVER CLEVELAND VAUGHAN, and OSCAR S. VAUGHAN, Peti-
tioner,

vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times herein after mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:—

1 *Petition for Mandamus.*

Filed August 2, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49698.

THE UNITED STATES OF AMERICA *ex Relatione* BENJAMIN F.
VAUGHAN, Guardian & Next Friend of EDWARD A. VAUGHAN,
GROVER CLEVELAND VAUGHAN, and OSCAR S. VAUGHAN, Peti-
tioner,

vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

Mandamus.

Your petitioner respectfully represents:

1. That he is a citizen of the United States and a citizen, member and resident of the Chickasaw Nation in the Indian Territory, and a

Chickasaw Indian by intermarriage & is the father & natural guardian of Grover Cleveland & Oscar S. Vaughan.

2. That the respondent, James Rudolph Garfield, is a citizen of the United States, temporarily residing in the District of Columbia, and is an officer of the Government of the United States and Secretary of the Interior in said Government, and is sued as such, having succeeded on March 5, 1907, as said Secretary of the Interior the Ethan A. Hitchcock, hereinafter mentioned.

2 3. That, as heretofore stated, respondent's immediate predecessor in office as Secretary of the Interior was Ethan A. Hitchcock, to whom as said Secretary of the Interior was committed by Congress under certain laws hereinafter referred to the duty of final action on applications for citizenship in the Five Civilized Tribes in the Indian Territory and of approving the enrollment of those applicants whom he should deem entitled to be placed on the final rolls of members or citizens of any one of the Five Civilized Tribes or Nations, the Chickasaw Tribe or Nation being one of the said Five Civilized Tribes or Nations.

4. That by certain treaties and agreements between the United States and the Choctaw and Chickasaw Nations known as the Choctaw Treaty of September 27, 1830, (7 Stat. at Large, 333) and the consolidated Choctaw and Chickasaw Treaty of June 22, 1855, proclaimed by the President of the United States March 4, 1856, (11 Stat. at Large, 611) the United States in exchange for certain lands of said Indian tribes or Nations east of the Mississippi River and certain other good and valuable considerations from the Indian tribes or nations and each of them to the United States moving caused to be conveyed to the Choctaw and Chickasaw Nations the tract of country west of the Mississippi River whereon said Choctaw and Chickasaw Nations, including your petitioner, now reside, said land being conveyed "in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it" and the United States by the aforesaid treaty proclaimed March 4, 1856, covenanting that the- did thereby.

3 "forever secure and guarantee the lands embraced within the said limits (including the lands allotted to your petitioner as hereinafter stated), to the members of the Choctaw and Chickasaw Tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however,* That no part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

5. That said Indians and their heirs have not become extinct and have not abandoned the said land or any part thereof; that the reversionary interest of the United States in said lands has been otherwise terminated and surrendered to said Indians by the Acts of Congress, treaties and agreements herein mentioned as the Secretary of the Interior has heretofore admitted; that your petitioner's children herein named are and likewise have been long recognized

by the Choctaw and Chickasaw Nations as blood citizens or members of said tribe and were on the Leased District Payment Roll of the Chickasaw Nation of 1893 and their rights as citizens of the Chickasaw Nation never has been denied by said Nation; that your petitioner's children are the heirs of the Indians referred to in the said treaty proclaimed in 1856 and under the laws and usages of the Choctaw and Chickasaw tribes and of the United States were entitled prior to allotment as hereinafter mentioned to an equal undivided interest in the whole of the lands of the Choctaw and Chickasaw Nations after certain lands were duly and lawfully reserved for townsite, charitable and certain specified purposes in accordance with Acts of Congress and agreements duly entered
4 into and approved and ratified by the nations, parties thereto, between the United States and the Choctaw and Chickasaw Nations; and are now the owners of and possessed in vested right of a lawful allotment of land in the Chickasaw Nation and are further entitled to an equal, undivided distributive share in the funds and surplus lands of the Choctaw and Chickasaw Nations after allotments, as hereinafter referred to, as made to all the duly enrolled members of the Choctaw and Chickasaw Nations.

6. That under the provisions of various acts of Congress a Commission to the Five Civilized Tribes was created for the purpose, among other things, of making agreements with each of the Five Civilized Tribes for the division in severalty among their citizens or members of the lands held by them in common, of enrolling under the direction and approval of the Secretary of the Interior the members or citizens of each and every one of the Five Civilized Tribes and of allotting in severalty in fee simple to the members of the Choctaw and Chickasaw Nations the lands held by said nations as above set forth. That under the provisions of said Acts of Congress, of agreements effected in accordance therewith, and of treaties between the United States and said Indian Tribes, rolls of members of each of the tribes were directed to be prepared by said Commission under the supervision of the Secretary of the Interior from time to time and it was provided that when the enrollment of any person as a member of any one of the Five Civilized Tribes should be approved by the Secretary of the Interior his name should be
5 placed on the final roll of said tribe, and he thereby should become and be a member of the said tribe or nation and entitled to an allotment, in the Choctaw and Chickasaw Nations, of 320 acres of average allottable land in said nation, and to the other rights and privileges common to citizens of said nation.

That by the Act of June 10, 1896, (29 Stat., 321, 329) it was provided

“that the rolls of citizenship of the several tribes as now existing are hereby confirmed”

and that either the Commission to the Five Civilized Tribes or the legally constituted court or committee on citizenship of the several tribes should determine, after hearing, the applications of persons claiming right to be admitted and enrolled in the several nations,

either the tribe or any person aggrieved by any decision of the tribal authorities or the Commission to the Five Civilized Tribes to have the right of appeal within a limited time from such decision to the United States District Court, whose decision should be final, and the rolls thus prepared it was provided

"shall be, and are hereby, made rolls of citizenship of said nations or tribes,"

and should be filed with the Commissioner of Indian Affairs

"to remain there for use as the final judgment of the duly constituted authorities."

That by the Act of June 7, 1897, (30 Stat., 62, 84), it was provided that the words "rolls of citizenship" as used in the act of June 10, 1896,

"shall be construed to mean the last authenticated rolls of each tribe which have been approved by the council of the nation, and the descendants of those appearing on such rolls, and such additional names and their descendants as have been subsequently added, either by the council of such nation, the duly constituted courts thereof, or the commission under the Act of June 10, 1896."

It was provided that all other names appearing upon such rolls, and not confirmed by the Act of June 10, 1896, as herein construed, might within six months from the passage of the act be stricken from the rolls

"Where the party affected shall have ten days' previous notice that said commission will investigate and determine the right of such party to remain upon such roll as a citizen of such nation,"

provided, however, that the person so stricken from the rolls should have a right of appeal to the United States District Court.

That by the Act of June 28, 1898 (30 Stat., 495-503), after making special and separate provision as to citizenship in the Cherokee Nation, it was provided:

"Said commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made.

* * * * *

"The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to the tribal laws, shall alone constitute the several tribes which they represent."

That by the Act of May 31, 1900 (31 Stat., 221-236) it was provided that the commission

"shall not receive, consider, or make any record of, any application of any person for enrollment as a member of any tribe of the In-

dian Territory who has not been a recognized citizen thereof and duly and lawfully enrolled or admitted as such, and its refusal of such application shall be final when approved by the Secretary of the Interior."

7 That by the Act of March 3, 1901, (31 Stat., 1058-1077), it was provided

"the rolls made by the Commission to the Five Civilized Tribes, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon shall alone constitute the several tribes which they represent,"

and the Secretary of the Interior was directed to fix a time by agreement or otherwise,

"for closing said rolls, after which no name shall be added thereto."

That by the Act of July 1, 1902 (32 Stat., 641), ratifying an agreement between the United States and the Choctaw and Chickasaw Nations it was provided that the rolls of citizenship of the Choctaw and Chickasaw citizens should be made in strict compliance with the acts of Congress approved June 28, 1898, and May 31, 1900, aforesaid, provided, however, that no persons claiming right to enrollment or allotment by virtue of a judgment of the United States District Court under the Act of June 10, 1896, and which right is contested by legal proceedings under the provisions of this agreement

"shall be enrolled or receive allotment of lands until his right thereto has been finally determined."

By Section 30 of said agreement it was provided:

30. For the purpose of expediting the enrollment of the Choctaw and Chickasaw citizens and the Choctaw and Chickasaw freedmen, the said Commission shall, from time to time and as early as practicable, forward to the Secretary of the Interior lists upon which shall be placed the names of those persons found by the Commission to be entitled to enrollment. The lists thus prepared, when approved by the Secretary of the Interior, shall constitute a part and parcel of the final rolls of citizens of the Choctaw and Chickasaw tribes, and of Choctaw and Chickasaw freedmen, upon which

8 allotment of land and distribution of other tribal property shall be made as herein provided. Lists shall be made up and forwarded when contests of whatever character shall have been determined, and when there shall have been submitted to and approved by the Secretary of the Interior lists embracing names of all those lawfully entitled to enrollment, the rolls shall be deemed complete. The rolls so prepared shall be made in quintuplicate, one to be deposited with the Secretary of the Interior, one with the Commissioner of Indian Affairs, one with the principal chief of the Choctaw Nation, one with the governor of the Chickasaw Nation, and one to remain with the Commission to the Five Civilized Tribes."

By Section 31, it was provided that inasmuch as it was claimed

by the Choctaw and Chickasaw Nations that the United States courts acting under the Act of June 10, 1896, had admitted persons to citizenship or enrollment in the Choctaw and Chickasaw Nations without notice to both nations and had tried citizenship appeals *de novo* that there should be created a Choctaw and Chickasaw Citizenship Court to determine whether the United States District Court had proceeded according to law and which it if decided adversely to the United States District Courts procedure should have the right to determine the citizenship case of any persons thus deprived of a favorable judgment upon his claimed citizenship and the judgment of the citizenship court should be final.

That by the Act of April 21, 1904, (33 Stat., 189-204) it was provided that the Commission to the Five Civilized Tribes should conclude its work on or before July 1, 1905, and cease thereafter to exist.

That by the Act of March 3, 1905, (33 Stat., 1048-50) it was provided that the Secretary of the Interior should complete the unfinished business of the Commission to the Five Civilized Tribes and there was conferred on him all the powers heretofore granted to the said commission.

That by the Act of April 26, 1906, (34 Stat., 137) it was provided that no person should be enrolled unless application for enrollment was made prior to December 1, 1905, and the rolls of citizenship were required to be completed by March 4, 1907.

7. That on or prior to August 22, 1905, the Secretary of the Interior affirmed a decision by the Commission to the Five Civilized Tribes holding that petitioner's children herein named were entitled to enrollment as citizens or members by blood of the Chickasaw Tribe or Nation of Indians and after a full and careful inquiry into the right of petitioner and of the record in the case, and without any fraud, concealment or artifice on the part of petitioner or said children as to any matter of fact or law, either pertinent or impertinent or material or immaterial or relevant or irrelevant as to his right to enrollment the name- of petitioner's children were on or before August 22, 1905, duly and regularly ordered placed on the final roll of citizens by blood of the Chickasaw Nation and thereafter a final roll of citizens by blood of the Chickasaw Nation containing the name- of your petitioner's children as citizens by blood of the Chickasaw Nation were duly and regularly approved by the then lawful incumbent of the office of Secretary of the Interior, the name- of your petitioner- — being duly entered and appearing on the regularly authenticated and approved final rolls of citizens by blood of the Chickasaw Nation as follows:

10

Chickasaw Roll, Citizens by Blood.

No.	Name.	Age.	Sex.	Blood.	Cen. card No.
*	*	*	*	*	*
4970	Vaughan, Grover Cleveland.	18	M	1 / 8	1807
4971	Vaughan, Oscar S.	12	M	1 / 8	1807
*	*	*	*	*	*

(The * marks indicating other names were on said roll.)

That said final roll was, on, to wit, the 7th day of September, 1905, duly and regularly approved by the then lawful incumbent of the office of the Secretary of the Interior as is evidenced by the following genuine and regular notation at the bottom of said approved final roll:

Department of the Interior,
Washington, D. C., September 7, 1905.

Approved:

THOS RYAN, *Acting Secretary*.
L. R. S.

That by law and the direction of the Secretary of the Interior said Thomas Ryan as Acting Secretary of the Department of the Interior was authorized to affix his signature to the roll aforesaid and to approve the same.

That petitioner's children's enrollment was approved under rules regulations, custom and practice whereby notice was given of all steps affecting rights of parties with opportunity afforded for
11 appeals and motions for rehearing and review by petitioner or the Choctaw and Chickasaw Nations.

8. That prior to the time when, as will appear hereinafter, your petitioner's children's names were stricken from or attempted to be stricken from the final rolls of citizens by blood of the Chickasaw Nation, without notice, as will appear hereinafter, your petitioner's children each duly and regularly selected an allotment of 320 acres of average allottable lands of the Choctaw and Chickasaw Nations and after the name- of your petitioner's children had been duly and regularly placed on the final approved rolls of the citizens by blood of the Chickasaw Nation an allotment certificate was duly and regularly issued to your petitioner's children for the lands so selected by them by the Commission to the Five Civilized Tribes and is now held by them as conclusive evidence of their right to the lands so selected by them and described in the allotment certificate aforesaid and later patent to the same was regularly & lawfully issued to them. That the statutes made and approved under which your petitioner selected the allotment referred to and an allotment certificate was issued to him provide:

Act Approved July 1, 1902 (32 Stat. at Large, 641).

"SECTION 30. For the purpose of expediting the enrollment of the Choctaw and Chickasaw citizens * * * the said Commission (the Commission to the Five Civilized Tribes) shall, from time to time, and as early as practicable, forward to the Secretary of the Interior lists upon which shall be placed the names of those persons found by the Commission to be entitled to enrollment. The lists thus prepared, when approved by the Secretary of the Interior, shall constitute a part and parcel of the final rolls of citizens of the Choctaw and Chickasaw tribes * * * upon which allotment of land and distribution of other tribal property shall be made as herein provided.

12 “SECTION 11. There shall be allotted to each member of the Choctaw and Chickasaw Tribes, as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to 320 acres of the average allottable land of the Choctaw and Chickasaw Nations * * * as soon as practicable after the approval by the Secretary of the Interior of his enrollment.

“SECTION 23. Allotment certificates issued by the Commission to the Five Civilized Tribes shall be conclusive evidence of the right of any allottee to the tract of land described therein.”

9. That after the issuance to petitioner's children of said allotment certificate and patent the Secretary of the Interior, Ethan A. Hitchcock, predecessor in office of respondent as such Secretary of the Interior, arbitrarily, illegally and without notice of any kind whatsoever to your petitioner, who has only just learned what is now alleged to have taken place, undertook to deprive your petitioner's children of the rights by law vested in them and issued an order, which order, however, your petitioner and his children allege was inadequate for the purpose even had the Secretary of the Interior lawful right and power so to do, which lawful right and power your petitioner denies, under which your petitioner's children's names on some date to your petitioner unknown, though the same was subsequent to the issuance of an allotment certificate to your petitioner by the Commission to the Five Civilized Tribes, was stricken or attempted to be stricken from the aforesaid final approved rolls of citizens by blood of the Choctaw and Chickasaw Nations by the mutilation of said rolls as follows: A line drawn through your petitioner's children's names thus [Vaughan, Grover Cleveland, Vaughan Oscar S.]* and the writing after said name- of the following: “See 22,850—1907.” That your petitioner is in-
13 formed and believes that this action was taken upon the supposed theory that your petitioner's children came within, as to their rights as citizens of the Chickasaw Nation, an opinion rendered in the month of February, 1907, by the Attorney-General of the United States in some case to which your petitioner nor his children were not parties, either directly or indirectly, personally or by representation, and in which your petitioners had no hearing or right to be heard, with the result to deprive your petitioners unless protected by this honorable court of their vested right to a share in the lands and funds of the Choctaw and Chickasaw Nations without due process of law as guaranteed to your petitioners by the Constitution and laws of the United States and also by the Constitution and laws of the Choctaw and Chickasaw Nations.

Your petitioner on information and belief avers that the changes set forth above were not noted prior to March 4, 1907, on all five of the rolls required by law to be made and deposited as provided

[* Words enclosed in brackets erased in copy.]

by the Act of July 1, 1902, *supra*, and demands that respondent state on which of said rolls these changes were noted prior to March 4th, last. Your petitioner further avers that since March 4, 1907, the said rolls, contrary to law, have been further changed and mutilated by writing in red ink above your petitioner's children's names on said rolls the following: "Cancelled M'ch 4, 1907."

10. Petitioner on information and belief avers that the true present value of the allotment selected by him and to which he
14 has been issued an allotment certificate and patent and of his share in the funds and in the surplus lands of the Choctaw and Chickasaw Nations after all lawful members have been given their lawful share therein is in excess of five thousand dollars.

11. Your petitioner further states that he has made demand on the respondent as Secretary of the Interior that he cause the line run through petitioner's children's names to be erased and the notation placed opposite and above the name- of your petitioners to be erased and to restore your petitioner's children's names to the rolls of citizens by blood of the Chickasaw Nation as fully as *he was* thereon prior to the hereinbefore mentioned illegal and arbitrary act of respondent's predecessor in office in striking or attempting to strike petitioner's children's names therefrom, but respondent has refused and neglected so to do, and on the contrary, as your petitioner is informed and believes, holds that petitioner's children are not enrolled members or citizens of the Chickasaw Nation nor entitled to share in its lands and funds and will be required to surrender the land allotted to them.

Wherefore, inasmuch as the Honorable James Rudolph Garfield, Secretary of the Interior, has refused to restore your petitioner's children's names to the approved rolls of members or citizens by blood of the Chickasaw Nation, to remove the cloud placed by his predecessor in office on your petitioner's children's rights, claims and demands as enrolled citizens or members of the Chickasaw Nation and to recognize your petitioner's children as lawfully
15 enrolled citizens or members of said nation, and as the law provides no other adequate remedy in his lawful rights whereof they are now unjustly and arbitrarily deprived, your petitioner prays:

1. That a writ of mandamus may be issued and directed to the Honorable James Rudolph Garfield, Secretary of the Interior, commanding him to erase or cause to be erased the marks or notations made on the approved rolls of the members by blood of the Chickasaw Nation in derogation of your petitioner's children's rights or claims as duly and lawfully enrolled citizens or members by blood of said nation, to restore your petitioner's children to full and lawful enrollment as citizens or members by blood in said Chickasaw Nation and to recognize your petitioner's children as lawful citizens or members by blood of said Chickasaw Nation with all the rights and privileges thereunto appertaining.

2. For such other and further right or rights or relief as to the

Court may seem proper and the nature of your petitioner's case may require.

And as in duty bound, your petitioner will ever pray.

BENJAMIN F. VAUGHAN,
*Guardian & Next Friend of Grover Cleveland
Vaughan and Oscar S. Vaughan, Petitioner.*

KAPPLER & MERILLAT,
JAMES K. JONES,
CHAS. M. FECHHEIMER,
Att'ys for Petitioner.

16 DISTRICT OF COLUMBIA, ss:

Before the subscriber, Clerk of the Sup. Ct. in and for the District of Columbia, on the 2d day of Aug. A. D. 1907, personally appeared Charles H. Merillat, who made oath on the Holy Evangelists of Almighty God that he is the attorney of Benjamin F. Vaughan, Grover Cleveland Vaughan and Oscar S. Vaughan the within petitioners, and is authorized to institute these proceedings; that he has read the petition subscribed and that the facts as set forth in said petition are true to the best of deponent's knowledge and belief.

CHARLES H. MERILLAT.

Subscribed and sworn to before me this 2d day of — A. D. 1907.

J. R. YOUNG, *Clerk,*
By H. BINGHAM, *Ass't Clerk.*

Rule to Show Cause.

Filed August 2, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49698.

THE UNITED STATES OF AMERICA *ex Relatione* BENJAMIN F.
VAUGHAN, Guardian and Next Friend of GROVER CLEVELAND
VAUGHAN, and OSCAR S. VAUGHAN, Petitioner,

vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

Mandamus.

17 On consideration of the petition filed herein, it is by the court this 2nd day of August, 1907, ordered:

That the respondent James Rudolph Garfield, Secretary of the Interior, show cause on or before the 15th day of August 1907 why the writ of mandamus should not issue as prayed.

JOB BARNARD, *Justice.*

Marshal's Return.

Served copy of within rule to show cause, together with copy of the petition in this cause on James Rudolph Garfield, Secretary of the Interior, by service on Jesse E. Wilson, acting secretary.

August 2 1907

AULICK PALMER, *Marshal*.
S.

Answer.

Filed December 3, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49698.

THE UNITED STATES *ex Rel.* BENJAMIN J. VAUGHAN, Guardian and Next Friend of GROVER CLEVELAND VAUGHAN, and OSCAR S. VAUGHAN, Petitioner,

vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

18 The respondent, for answer to the rule to show cause why a writ of mandamus should not issue against him as prayed in the petition and to said petition, says:

1. That he does not admit that Benjamin J. Vaughan or his children, Grover Cleveland Vaughan and Oscar S. Vaughan are citizens of the United States or members by blood or intermarriage of the Chickasaw Nation.

2. Respondent admits that he is a citizen of the United States, temporarily residing in the District of Columbia, and that he succeeded Ethan A. Hitchcock as Secretary of the Interior on March 5, 1907.

3. Respondent admits that, under the laws of Congress and the agreements with the Choctaw and Chickasaw Nations, it was the province and duty of his predecessor, as Secretary of the Interior, to take final action upon the applications of persons to be enrolled as members of the Five Civilized Tribes in the Indian Territory, as provided by law, with the exception of such cases as were committed to the jurisdiction of the Citizenship Court by the agreement with the Choctaw and Chickasaw Nations ratified by the Act of Congress of July 1, 1902 (32 Stat. 641), and approve or disapprove the same.

Respondent further says that by the last named act and agreement (paragraph 24) and the Act of March 3, 1905, (33 Stat. 1048, 1060) exclusive jurisdiction of all matters relating to the allotment of lands in said Tribes, including the making of the rolls of citizenship

of said Tribes, except as otherwise provided therein, was conferred upon the Secretary of the Interior.

4. Respondent admits that the lands occupied by the Choctaw and Chickasaw Nations in the Indian Territory were granted and secured to them by the treaties referred to, in the fourth paragraph of the petition, and the patent issued in pursuance thereof.

5. Respondent admits that said nations have not become extinct or abandoned said lands, but does not admit that petitioner's children are blood members of the Chickasaw Nation, and denies that they have acquired a vested right to any specific tract or allotment of land in said nation, or that they are duly enrolled as members by blood of said nation upon the rolls prepared by the Commission to the Five Civilized Tribes and the Secretary of the Interior as provided by law, and thereby entitled to a distributive share in the funds and surplus lands of said nation.

6. Respondent admits that provision was made for the enrollment of members of the Five Civilized Tribes in the Indian Territory for the purpose of allotting the lands of said nations in severalty, as set forth in the several acts referred to in the sixth paragraph of the petition.

7. Respondent says that the facts respecting the enrollment of the children of Benjamin J. Vaughan, Edward A., Grover Cleveland and Oscar S. Vaughan, are as follows: May 21, 1904, the Acting Secretary of the Interior approved a partial roll of alleged citizens by blood of the Chickasaw nation, which partial roll included the names of said children. June 28, 1904, the Secretary of the Interior cancelled such approval, because of an opinion rendered by the Acting Attorney General May 9, 1904 (25 Opin. A. G. 155), that "annulment of the United States court judgment affirming a favorable decision of the Commission to the Five Civilized Tribes upon an application for citizenship so far deprived the applicant of a favorable judgment as to devolve upon him the duty of causing his cause to be transferred to the citizenship Court," and that "annulment of the United States court judgment did not revive and put into force and effect the judgment of the Commission to the Five Civilized Tribes admitting such person to citizenship, and that enrollment by the Commission based upon such a theory would be a clear violation of the rights of the Indian nations," said children having been admitted to citizenship by the Commission to the Five Civilized Tribes in 1896 and their judgments affirmed on Appeal by the United States court in the Indian Territory. (See Exhibit- A & B attached hereto and made a part hereof.) Subsequently the Secretary of the Interior held that the Commission to the Five Civilized Tribes had no jurisdiction under the Act of June 10, 1896 (29 Stat. 339), of persons who were on the tribal rolls, and that such persons did not, therefore, come within the scope of the opinion of the Acting Attorney General of May 9, 1904. Accordingly an investigation of the status of Benjamin J. Vaughn and his children, Edward A., Grover Cleveland and Oscar S. Vaughn, was directed by the Acting Secretary of the Interior in letters to the Commission to the Five

21 Civilized Tribes dated April 1, 1905, and May 2, 1905. The Commission made such investigation, found the parties entitled to be enrolled, and placed the names of said children upon a partial roll of members by blood of the Chickasaw Nation, which roll was approved by the Acting Secretary of the Interior, Thomas Ryan, on September 7, 1905. Subsequently, however, to-wit, February 28, 1907, the predecessor of your respondent, being of the opinion that Benjamin J. Vaughn and his children, Edward A., Grover Cleveland, and Oscar S. Vaughn came within the scope of an opinion rendered by the Attorney General in certain Choctaw citizenship cases, February 19, 1907 (26 Op. A. G. 127), disapproved their enrollment and struck their names from said partial rolls. (See Exhibits C, D, and E, attached hereto and made a part hereof.)

8. Respondent admits that certificates of allotment were issued to petitioner's said children by the Commissioner to the Five Civilized Tribes for the lands selected by them as their allotments, and that patents have been issued and recorded therefor.

9. Respondent says that the names of said children of Benjamin J. Vaughn were stricken from the partial roll of members of the Chickasaw Nation approved September 7, 1905, as aforesaid, by order of his predecessor as Secretary of the Interior, on February 28, 1907, prior to the expiration of the time fixed by the Act of April 26, 1906 (36 Stat. 137), for the completion of the rolls of said nation, and a notation thereof made upon the copy of said list in his possession and their names lined out thereon on the same day, as appears from the copies of the records of the Interior Department marked Exhibits C, D, and E, attached hereto and
22 made a part hereof, and that their names were lined out upon the other four copies of said list in pursuance of said order of his predecessor, as respondent is informed and believes, prior to the close of March 4, 1907, one of said copies being in the possession of the Commissioner of Indian Affairs and the other three in the possession of the Commissioner to the Five Civilized Tribes.

And respondent avers that the action of his predecessor in striking the name- of petitioner's children from the approved rolls of members of the Chickasaw Nation, as aforesaid, was in accordance with his long established practice, extending from the time the agreement ratified by the act of July 1, 1902 (32 Stat. 641), became operative until March 4, 1907, his predecessor, as the approved rolls of the Five Civilized Tribes in respondent's possession show, having struck several hundred names from said rolls during that time because, in his judgment, they were improperly enrolled.

Respondent says that there was no rule or regulation requiring the giving of notice in such cases. As to the matter of notice, respondent says that, as he is advised and believes, his predecessor at first exercised the right to strike names from approved lists of members of the Five Civilized Tribes, prior to the time fixed for the completion of the rolls, when in his judgment they were improperly and unlawfully enrolled, without notice to the party concerned,

23 but that for about three years prior to March 4, 1907, the date fixed by the act of Congress of April 26, 1906, for the completion of the rolls, it had been the custom or practice of his predecessor to give notice in such cases and afford the party concerned an opportunity to be heard, but respondent says that, owing to the limited time in which his predecessor had to act before the expiration of the time fixed for completing the rolls, it was impossible to give notice and opportunity to be heard in the case of petitioner's children and a large number of other persons whose right to be enrolled was believed by his predecessor to be adversely affected by the principles announced in an opinion rendered by his predecessor by the Attorney General on February 19, 1907, in the case of certain other persons who had been enrolled as members of the Choctaw Nation for allotment purposes, and who were stricken from the rolls by his predecessor in consequence of that opinion.

10. Respondent says that he is not advised as to the value of the lands or moneys claimed by petitioner's children.

11. Respondent admits that petitioner made demand that respondent restore petitioner's children to said roll and that he refused so to do.

Further answering respondent says that by the act of Congress of April 26, 1906 (34 Stat. 137), the rolls of members of the Chickasaw Nation were required to be fully completed on or before March 4, 1907, and the Secretary of the Interior was deprived of jurisdiction to approve the enrollment of any person after that date.

24 Respondent further says that petitioner's children, by themselves or through said petitioner, applied in 1896 to the Commission to the Five Civilized Tribes to be admitted and enrolled as members of the Chickasaw Nation under the act of June 10, 1896 (29 Stat. 329), and they were adjudged entitled to admission and enrollment; that the Chickasaw Nation appealed from the judgment of the Commission to the United States Court, Southern Division, Indian Territory, which affirmed the same; that thereafter the judgment of the United States Court, was annulled by the Citizenship Court in the test suit provided for by the agreement with the Choctaw and Chickasaw Nations ratified by the Act of Congress of July 1, 1902 (32 Stat. 641, 646); that petitioner and his children failed to remove their cases to the Citizenship Court for final determination as provided by said act; and that thereafter the Commission to the Five Civilized Tribes and Secretary of the Interior had no jurisdiction or authority to enroll them.

Respondent further says that the matters sought to be controlled by the petition relate to the allotment of land in severalty in the Chickasaw Nation, and that by the legislation of Congress exclusive jurisdiction of all matters relating to the allotment of lands in severalty in said nation has been conferred upon the Secretary of the Interior.

Respondent further says that the matters sought to be controlled by the petition involve the exercise of judgment and discretion on the part of the Secretary of the Interior.

25 Wherefore respondent prays that the rule against him be discharged and the petition dismissed at the cost of the petitioner.

JAMES RUDOLPH GARFIELD,
Secretary of the Interior, for Respondent.

EDWARD T. SANFORD,
Assistant Attorney General,
WILLIAM H. HARR,
Special Assistant to Attorney General,
Attorneys for Respondent.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

James Rudolph Garfield, being duly sworn, deposes and says: That he is the respondent in the above entitled cause; that he has read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge and belief.

JAMES RUDOLPH GARFIELD.

Subscribed and sworn to before me this Third day of December, 1907.

[SEAL.]

W. BERTRAND ACKER,
Notary Public, D. C.

26 EXHIBIT "A."

(Copy.)

DEPARTMENT OF THE INTERIOR, Y. P.
WASHINGTON, *June 28, 1904.* F. H. E. C. B. M.

I. T. D. 4018, 4022-1904.

4352, 4398- "

4400, 4402- "

4404, 4432- "

4434, 4436- "

4438, 5224- "

L. R. S.

Commission to the Five Civilized Tribes, Muskogee, Indian Territory.

GENTLEMEN: May 21, 1904, the Department approved partial roll of alleged citizens by blood of the Choctaw Nation, numbers 15551 to 15559, inclusive, and partial roll of alleged citizens by blood of the Chickasaw Nation, numbers 4827 to 4834, inclusive.

It appears from your report submitting these partial rolls that the applicants were "admitted" by your Commission in 1896, and that on appeal your decisions were sustained by the United States Court.

May 26, 1904, the Indian Office recommended that you be di-

rected to return the parts of these partial rolls in your possession, and that the approval of such partial rolls be cancelled, in view of the opinion of the Acting Attorney General, of May 9, 1904, in which it was held that the

27 "Annulment of the United States court judgment affirming a favorable decision of the Commission to the Five Civilized Tribes upon an application for citizenship so far deprived the applicant of a favorable judgment as to devolve upon *him* the duty of causing his cause to be transferred to the citizenship court. I am further of opinion that annulment of the United States court judgment did not revive and put into force and effect the judgment of the Commission to the Five Civilized Tribes admitting such person to citizenship, and that enrollment by the Commission based upon such a theory would be a clear violation of the rights of the Indian nations."

On June 8, 1904, the parts of these partial rolls in your possession were returned to the Department, in accordance with instructions of May 28, 1904, and you recommend the cancellation of their approval.

The approval of said partial rolls is hereby cancelled. Copies of eight Indian Office letters, of May 28 and 31, 1904, transmitting communications from the attorneys for the Choctaw and Chickasaw Nations relative to these partial rolls, are inclosed, and also copy of Indian Office letter of June 24th, transmitting your report of June 8, 1904.

Respectfully,

E. A. HITCHCOCK, *Secretary*.

9 inclosures.

28

EXHIBIT "B."

(Copy.)

Chickasaw Roll, Citizens by Blood.

No.	Name.	Age.	Sex.	Blood.	Census card No.
4827	Vaughan, Edward A.....	20	M	1 / 8	1314
4828	Vaughan, Grover Cleveland..	18	M	1 / 8	1314
4829	Vaughan, Oscar S.....	12	M	1 / 8	1314
4830	Thompson, Charles William.	7	M	1 / 8	1616
4831	Goldsby, John E.....	44	M	1 / 32	1697
4832	Goldsby, Linniel E.....	16	M	1 / 64	1697
4833	Goldsby, Bessie	13	F	1 / 64	1697
4834	Keyes, Ella.....	15	F	1 / 2	1698

L. R. S.

Department of the Interior,
Washington, D. C., June 28, 1904.

Approval cancelled. (See letter to Commission to the Five Civilized Tribes, June 28, 1904, 164 p. c. 127-8.)

E. A. HITCHCOCK, *Secretary*.

29

EXHIBIT "C."

(Copy.)

DEPARTMENT OF THE INTERIOR, J. F. Jr.
WASHINGTON, *February* 28, 1907. L. L. B.

I. T. D. 3128-1905.

Direct.

Commissioner to the Five Civilized Tribes, Muskogee, Indian Territory.

SIR: Referring to departmental letter of February 26, 1907, in the matter of the application for the enrollment of Benjamin C. Vaughan, Jr., as a citizen of the Chickasaw Nation, your attention is called to the father of this applicant, one Benjamin J. Vaughan, and to the children of said Benjamin J. Vaughan, Edward A., Grover C., and Oscar S. Vaughan.

It appears that the names of these persons have been placed upon the rolls of the Chickasaw Nation. From the information available to the Department it also appears that on December 17, 1902, the Choctaw and Chickasaw Citizenship Court, by setting aside the decree of the United States court favorable to these applicants, rendered a decision which, in accordance with the opinion of the Attorney General dated February 19, 1907, was final.

You are accordingly directed, in the absence of reasons
30 not known to the Department, to strike the names of said Benjamin J. Vaughan and his descendants from the rolls of the Chickasaw Nation as of this date, and to report to the Department your action, giving roll numbers, in order that this action may be noted upon the copies of the rolls in the possession of the Department and the Indian Office.

A carbon copy hereof has been sent to the Indian Office.

Respectfully,

JESSE E. WILSON,
Assistant Secretary.

31

EXHIBIT "D."

(Copy.)

DEPARTMENT OF THE INTERIOR, Y. P.
WASHINGTON, *March* 4, 1907. L. L. B.

I. T. D. 7794-1907.

L. R. S.

F. L. C.

Commissioner to the Five Civilized Tribes, Muskogee, Indian Territory.

SIR: In answer to departmental telegram of February 23, 1907, and letter of the same date, you reported in letter of February 27, 1907, after inspection of the partial rolls of the Choctaw and Chicka-

saw nations, prepared under the act of June 28, 1898 (30 Stat., 495), and subsequent legislation, the persons whose names have been placed on such partial rolls, in your opinion, contrary to the views expressed in the Attorney-General's opinion of February 19, 1907, in the case of Myrtie Randolph and others, copy of which was transmitted to you with letter of February 23, 1907, and which names you recommend be *stricken* from the partial rolls, opposite the numbers mentioned by you.

Your list is as follows:

* * * * *

Chickasaws by Blood and Intermarriage.

* * * * *

32 Benjamin J. Vaughan, opposite No. 605, upon the final roll of citizens by intermarriage of the Chickasaw Nation. Admitted by Commission in 1896 in case No. 92; admitted by United States court for Southern district of Indian Territory; no appeal to the Choctaw and Chickasaw Citizenship Court. Patents recorded.

Edward A. Vaughan, Grover Cleveland Vaughan and Oscar S. Vaughan, opposite Nos. 4969, 4970 and 4971, respectively, upon the final roll of citizens by blood of the Chickasaw Nation. Admitted by Commission in 1896 in case No. 92; affirmed by United States court; no appeal to Choctaw and Chickasaw Citizenship Court. Patents recorded.

* * * * *

The Indian Office, to which was referred your letter of the 27th ultimo for report, concurs in letter of March 2, 1907, in your recommendation that such names be stricken from the rolls.

The Department is compelled to rely upon your investigation, as the act of April 26, 1906 (34 Stat., 137), provides in section 2 that the rolls of the Choctaw and Chickasaw nations shall be completed on or before the 4th day of March, 1907, and that the Secretary of the Interior shall have no jurisdiction to approve the enrollment of any person after such date. Assuming, therefore, that your information is correct, the names of the persons mentioned, not heretofore stricken from the partial rolls, are stricken from such rolls this day, notwithstanding any decision that may have been made by the Department in favor of such persons.

* * * * *

33 If by inadvertence the name of anyone has been left on any partial roll after decision adverse to him was made by the Department prior to March 5, 1907, and since the opinion of the Attorney-General referred to, the name of such person will be stricken from the roll as of this date.

A copy of Indian Office letter of March 2, 1907, is inclosed.

Respectfully,
(Signed)

E. A. HITCHCOCK, *Secretary.*

1 inclosure.

34 EXHIBIT "E."
(Copy.)

Chickasaw Roll, Citizens by Blood.

No.		Age.	Sex.	Blood.	Census card No.
4968	Thompson, Charles William...	7	M	1 / 8	1616
	Cancelled Feb. 28/07. 326 p. c. 75. See also March 4/07. 328 p. c. 175.				
[4969	Vaughan, Edward A.....	20	M	1 / 8	1807]*
	Cancelled Feb. 28/07. 326 p. c. 75. See also March 4/07. 328 p. c. 175.				
[4970	Vaughan, Grover Cleveland....	18	M	1 / 8	1807]*
	Cancelled Feb. 28/07. 326 p. c. 75. See also March 4/07. 328 p. c. 175.				
[4971	Vaughan, Oscar S.....	12	M	1 / 8	1807]*
4972	Brown, Kelo.....	80	M		1821

Department of the Interior,
Washington, D. C., Sep. 7, 1905.
Approved:

THOS. RYAN,
Acting Secretary.
L. R. S.

35 Demurrer.

Filed December 9, 1907.

In the Supreme Court of the District of Columbia.

Law. No. 49698.

THE UNITED STATES OF AMERICA *ex Rel.* BENJAMIN J. VAUGHAN,
G'rd'n, Petitioner,
vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

The Petitioner says that the answer filed by the Respondent in the above entitled cause is bad in substance.

KAPPLER & MERILLAT,
Attorneys for Petitioner.

NOTE.—One matter to be argued on demurrer is that the answer sets forth no sufficient reason in law for the cancellation by the Secretary of the Interior of the enrollment of Petitioner duly and regularly ordered.

[* Words and figures enclosed in brackets erased in copy.]

36

Order that Mandamus Issue.

Filed December 9, 1907.

In the Supreme Court of the District of Columbia.

Law. No. 49698.

THE UNITED STATES OF AMERICA *ex Rel.* BENJAMIN J. VAUGHAN,
Guardian and Next Friend of EDWARD A. VAUGHAN, GROVER
CLEVELAND VAUGHAN, and OSCAR S. VAUGHAN, Petitioner,

vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

Upon hearing the Petitioner's demurrer to the answer of the Respondent herein, it is considered that said demurrer be, and the same is hereby sustained and the Respondent by his attorney says he will stand upon his answer: Thereupon, the Court being fully advised, it is considered, ordered and adjudged that the Respondent James Rudolph Garfield be and he is hereby commanded within twenty days after this date to restore the name of the Relator to the rolls of members or citizens of the Chickasaw Tribe or Nation, to erase from said rolls the statements placed thereon derogatory to Relator's rights in said tribe of said Chickasaw Tribe and to recognize Relator as an enrolled member of said tribe.

WRIGHT.

37

Order for Entering Appeal & Issuing Citation.

Filed December 24, 1907.

In the Supreme Court of the District of Columbia.

Law. No. 49698.

THE UNITED STATES *ex Rel.* BENJAMIN F. VAUGHN, Guardian, &c.,
of GROVER CLEVELAND & OSCAR S. VAUGHN,

vs.

JAMES RUDOLPH GARFIELD, Sec'y of Interior, Respondent.

The Clerk of said Court will please enter an appeal to the Court of Appeals by the respondent from the judgment entered December 9, 1907, in the above-entitled cause, & issue citation thereon.

By direction of the Attorney General.

WILLIAM R. HARR,
Special Assistant to the Attorney General,
Attorney for Respondent.

38 In the Supreme Court of the District of Columbia.

At Law. No. 49698.

THE UNITED STATES OF AMERICA *ex Relatione* BENJAMIN F. VAUGHAN, Guardian & Next Friend of EDWARD A. VAUGHAN, GROVER CLEVELAND VAUGHAN, and OSCAR S. VAUGHAN,

vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior.

The President of the United States to Benjamin F. Vaughan, Guardian & next friend of Edward A. Vaughan, Grover Cleveland Vaughan, and Oscar S. Vaughan, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the Rules of said Court, pursuant to an Appeal filed in the Supreme Court of the District of Columbia, on the 24th day of December, 1907, wherein James Rudolph Garfield, Secretary of the Interior, is Appellant, and you are Appellee, to show cause, if any there be, why the Judgment rendered against the said Appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry M. Clabaugh, Chief Justice of the Supreme Court of the District of Columbia, this 24th day of December in the year of our Lord one thousand nine hundred and seven.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By ALF. G. BUHRMAN,
Ass't Cl'k.

Service of the above Citation accepted this 24th day of December, 1907.

CHAS. H. MERILLAT,
Attorney for Appellee.

[Endorsed:] No. 49698. Law. Citation. Issued Dec. 24, 1907.

39 *Directions to Clerk for Preparation of Transcript of Record.*

Filed December 27, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49698.

THE UNITED STATES *ex Rel.* BENJAMIN F. VAUGHAN, Guardian
and Next Friend of GROVER CLEVELAND VAUGHAN and OSCAR
S. VAUGHAN, Petitioner,

vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

The Clerk will please prepare transcript of the record in this case,
as follows:

1. Petition.
2. Rule to show cause.
3. Answer, including exhibits.
4. Demurrer.
5. Order sustaining demurrer, etc.
6. Notation of appeal.

WILLIAM R. HARR,
*Special Assistant to the Attorney
General, Attorney for Respondent.*

40 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 39 both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 49698 at law, wherein The United States of America, *ex relatione* Benjamin F. Vaughan, guardian, &c., *et als.* are Petitioners, and James Rudolph Garfield, Secretary of the Interior, is respondent, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 22d day of January, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1856. James Rudolph Garfield, Secretary of the Interior, appellant, *vs.* The United States of America *ex relatione* Benjamin F. Vaughan, &c. Court of Appeals, District of Columbia. Filed Jan. 24, 1908. Henry W. Hodges, clerk.

